

HOUSE BILL No. 1337

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5; IC 36-7.

Synopsis: Zoning adjudication procedures. Makes zoning adjudications subject to the law governing administrative orders and procedures for state agencies. Requires a local planning and zoning agency to index final orders. Allows alternate members to be appointed for plan commission and board of zoning appeals proceedings when regular members are unable to participate. Allows all plan commissions to designate historic commissions to hold hearings to adopt, amend, or partially repeal a zoning ordinance or amend a zoning map. Allows all plan commissions to combine hearings. Establishes requirements for vacating a recorded covenant. Makes conforming amendments. Repeals statutes concerning matters covered by the law governing administrative orders and procedures.

Effective: Upon passage; January 1, 2006.

Thomas, Koch

January 13, 2005, read first time and referred to Committee on Local Government.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1337

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-21.5-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2.
3 "Administrative law judge" refers to an individual or panel of
4 individuals acting in the capacity of an administrative law judge in a
5 proceeding. **The term includes an individual or a panel of**
6 **individuals appointed under a land use ordinance to act in the**
7 **capacity of administrative law judge in a proceeding, including:**
8 (1) a hearing examiner;
9 (2) a hearing officer;
10 (3) an executive committee; or
11 (4) a plat committee.
12 SECTION 2. IC 4-21.5-1-3 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 3. "Agency"
14 means:
15 (1) any officer, board, commission, department division, bureau,
16 or committee of state government that is responsible for any stage
17 of a proceeding under this article; **or**



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(2) a political subdivision exercising planning and zoning powers under IC 36-7-4, IC 36-7-5.1, IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, or IC 36-7-11.3.

Except as provided in IC 4-21.5-7, the term does not include the judicial department of state government ~~or the legislative department of state government. or a political subdivision.~~ **Except for purposes of IC 36-7-4, IC 36-7-5.1, IC 36-7-11, IC 36-7-11.1, IC 36-7-11.2, and IC 36-7-11.3, the term does not include a political subdivision.**

SECTION 3. IC 4-21.5-1-6.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 6.8. "Land use ordinance" means:**

- (1) a vacation ordinance under IC 36-7-3-12;**
- (2) a zoning ordinance under IC 36-7-4-606 through IC 36-7-4-608;**
- (3) a subdivision control ordinance under IC 36-7-4-701;**
- (4) an impact fee ordinance under IC 36-7-4-1311;**
- (5) a PUD district ordinance under IC 36-7-4-1505;**
- (6) a historic preservation ordinance under IC 36-7-11 or IC 36-7-11.1; or**
- (7) any other land use ordinance adopted under IC 36-7.**

SECTION 4. IC 4-21.5-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 7. "Law" means the federal or state constitution, any federal or state statute, a rule of an agency, ~~or~~ a federal regulation, or a land use ordinance.**

SECTION 5. IC 4-21.5-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 9. "Order" means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. The term includes:**

- (1) a license; ~~or~~**
- (2) a determination under IC 4-21.5-3-6(a)(3) or IC 4-21.5-3-6(a)(4); or**
- (3) in addition to any action under IC 36-7 that is subject to IC 4-21.5-3, a determination under IC 36-7-4-804, IC 36-7-4-918.1, IC 36-7-4-1332, IC 36-7-4-1333, IC 36-7-4-1336, IC 36-7-4-1339, IC 36-7-11.2-47, or IC 36-7-11.3-41.**

SECTION 6. IC 4-21.5-1-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 15. "Ultimate authority" means an individual or a panel of individuals in whom the final authority of an agency is vested by law or executive order. ~~If the~~**

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1 **agency is a political subdivision, the term includes an individual or**
 2 **a panel of individuals in whom the final authority of the local unit**
 3 **is vested by a land use ordinance including:**

- 4 **(1) a plan commission;**
 5 **(2) a board of zoning appeals;**
 6 **(3) an impact fee review board; or**
 7 **(4) a historic preservation commission.**

8 SECTION 7. IC 4-21.5-2-5 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 5. This article
 10 does not apply to the following agency actions:

- 11 (1) The issuance of a warrant or jeopardy warrant for the
 12 collection of taxes.
 13 (2) A determination of probable cause or no probable cause by the
 14 civil rights commission.
 15 (3) A determination in a factfinding conference of the civil rights
 16 commission.
 17 (4) A personnel action, except review of a personnel action by the
 18 state employees appeals commission under IC 4-15-2 or a
 19 personnel action that is not covered by IC 4-15-2 but may be
 20 taken only for cause.
 21 (5) A resolution, directive, or other action of any agency that
 22 relates solely to the internal policy, organization, or procedure of
 23 that agency or another agency and is not a licensing or
 24 enforcement action. Actions to which this exemption applies
 25 include the statutory obligations of an agency to approve or ratify
 26 an action of another agency.
 27 (6) An agency action related to an offender within the jurisdiction
 28 of the department of correction.
 29 (7) A decision of the department of commerce, the department of
 30 environmental management, the enterprise zone board, the tourist
 31 information and grant fund review committee, the Indiana
 32 development finance authority, the Indiana business
 33 modernization and technology corporation, the corporation for
 34 innovation development, the Indiana small business development
 35 corporation, or the lieutenant governor that concerns a grant, loan,
 36 bond, tax incentive, or financial guarantee.
 37 (8) A decision to issue or not issue a complaint, summons, or
 38 similar accusation.
 39 (9) A decision to initiate or not initiate an inspection,
 40 investigation, or other similar inquiry that will be conducted by
 41 the agency, another agency, a political subdivision, including a
 42 prosecuting attorney, a court, or another person.

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(10) A decision concerning the conduct of an inspection, investigation, or other similar inquiry by an agency.

(11) The acquisition, leasing, or disposition of property or procurement of goods or services by contract.

(12) Determinations of the department of workforce development under IC 22-4-18-1(g)(1), IC 22-4-40, or IC 22-4-41.

(13) A decision under IC 9-30-12 of the bureau of motor vehicles to suspend or revoke the driver's license, a driver's permit, a vehicle title, or a vehicle registration of an individual who presents a dishonored check.

(14) An action of the department of financial institutions under IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

(17) The adoption, amendment, or repeal of any comprehensive plan or land use ordinance.

SECTION 8. IC 4-21.5-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 32. (a) Each agency shall make all written final orders available for public inspection and copying under IC 5-14-3.

(b) ~~The~~ This subsection applies only to a state agency. An agency shall index final orders that are issued after June 30, 1987, by name and subject. An agency shall index an order issued before July 1, 1987, if a person submits a written request to the agency that the order be indexed.

(c) This subsection applies only to an agency that is a political subdivision. An agency shall index a final order issued after December 31, 2005, by name and subject. An agency shall index an order issued before January 1, 2006, if a person submits a written request to the agency that the order be indexed.

(d) An agency shall delete ~~from these orders~~ identifying details from a final order to the extent required by IC 5-14-3 or other law. In each case, the justification for the deletion must be explained in writing and attached to the order.

~~(b)~~ (e) An agency may not rely on a written final order as precedent to the detriment of any person until the order has been made available for public inspection and indexed in the manner described in

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~~subsection (a):~~ **this section.** However, this subsection does not apply to any person who has actual timely knowledge of the order. The burden of proving that knowledge is on the agency.

SECTION 9. IC 4-21.5-3-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 34. An agency is encouraged to develop informal procedures that are consistent with this article and make unnecessary more elaborate proceedings under this article. An agency **that is:**

(1) **a state agency** may adopt rules under IC 4-22-2; **or**

(2) **a political subdivision may adopt land use ordinances;** setting specific procedures to facilitate informal settlement of matters. This section does not require any person to settle a matter under the agency's informal procedures.

SECTION 10. IC 4-21.5-3-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 35. An agency may grant procedural rights to persons in addition to those conferred by this article so long as the rights conferred upon other persons by any law are not substantially prejudiced. ~~The~~ **An agency that is:**

(1) **a state agency** may adopt rules, under IC 4-22-2; **or**

(2) **a political subdivision may adopt land use ordinances;** concerning the nature and requirements of all procedures for requesting a proceeding or engaging in a proceeding, so long as the rules **and land use ordinances** are not inconsistent with this article.

SECTION 11. IC 4-21.5-3.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) For each type of administrative proceeding, the ultimate authority shall determine whether mediation is an appropriate means of alternative dispute resolution.

(b) For proceedings that an ultimate authority determines to be appropriate for mediation, ~~the~~ **an agency that is:**

(1) **a state agency** may adopt rules under IC 4-22-2; **or**

(2) **a political subdivision may adopt land use ordinances;** to implement this chapter. The rules **and land use ordinances**, to the extent possible, shall not be inconsistent with Rule 2 of the Indiana Supreme Court Rules for Alternative Dispute Resolution.

SECTION 12. IC 4-21.5-3.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 9. If rules **or land use ordinances** are adopted under section 2 of this chapter, the rules **or land use ordinances** must include guidelines for selection of a mediator for the ultimate authority when there is no appropriate mediator or listed mediator available and the parties cannot agree on an unlisted mediator.

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SECTION 13. IC 4-21.5-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 6. (a) Except as provided in ~~subsection~~ **subsections (e) and (f)**, venue is in the judicial district where:

- (1) the petitioner resides or maintains a principal place of business;
- (2) the agency action is to be carried out or enforced; or
- (3) the principal office of the agency taking the agency action is located.

(b) If more than one (1) person may be aggrieved by the agency action, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who was a party to the proceeding before the agency is a party to the petition for review.

(e) Venue with respect to judicial review of an action of the Indiana board of tax review is in the tax court.

(f) Venue with respect to judicial review of an action of an agency that is a political subdivision is in the judicial district where the agency action is to be carried out or enforced.

SECTION 14. IC 4-21.5-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 8. (a) A petitioner for judicial review shall serve a copy of the petition upon:

- (1) the ultimate authority issuing the order;
- (2) the ultimate authority for each other agency exercising administrative review of the order;
- (3) the attorney general, **if the agency is a state agency**; and
- (4) each party to the proceeding before an agency;

in the manner provided by the rules of procedure governing civil actions in the courts. If the ultimate authority consists of more than one (1) individual, service on the ultimate authority must be made to the secretary or chairperson of the ultimate authority.

(b) The petitioner shall use means provided by the rules of procedure governing civil actions in the courts to give notice of the petition for review to all other parties in any proceedings that led to the agency action.

SECTION 15. IC 4-21.5-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1. In addition to any other remedy provided by law:

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- (1) an agency in its own name;
- (2) ~~an~~ **a state** agency in the name of the state;
- (3) the attorney general in the name of the attorney general; or
- (4) the attorney general in the name of the state at the request of ~~an~~ **a state** agency;

may apply for a court order in a circuit or superior court to enforce an order issued under this article by a verified petition for civil enforcement.

SECTION 16. IC 4-21.5-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) This section applies only to the enforcement of a subpoena, discovery order, or protective order issued by an agency under this article.

(b) Any party to a proceeding before an agency who has obtained an order from an administrative law judge may apply for a court order in a circuit or superior court to enforce the subpoena or order issued by an agency by a verified petition for civil enforcement. Notice of an application under this section shall be given:

- (1) to the administrative law judge issuing the order;
- (2) to the attorney general, **if the agency is a state agency**; and
- (3) to each party to the proceeding before the agency;

by personal service or by the United States mail at the time the application is filed.

SECTION 17. IC 36-7-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1. (a) Section 2 of this chapter applies only to areas subject to the jurisdiction of no plan commission under this article.

(b) Sections 3 through 9 of this chapter apply only to:

- (1) areas subject to the jurisdiction of an advisory plan commission under this article; and
- (2) areas subject to the jurisdiction of no plan commission under this article.

(c) Sections 10, ~~11~~, 14, and 16 of this chapter apply to all areas of the state. ~~except that section 11 of this chapter applies only to areas subject to the jurisdiction of a plan commission under this article.~~

(d) Sections 12, 13, and 15 of this chapter apply to all areas of the state, except in a county having a consolidated city.

SECTION 18. IC 36-7-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 10. (a) The owners of land in a plat may vacate all or part of that plat **under:**

- (1) **this section; or**
- (2) **IC 36-7-4-711.**

(b) **This section applies when** all the owners of land in the plat

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~~must~~ declare the plat or part of the plat to be vacated in a written instrument. ~~and that~~ **The** instrument must be:

- (1) executed;
- (2) acknowledged; and
- (3) recorded;

in the same manner as a deed to land.

~~(b)~~ (c) Before offering the instrument for recording under this section, an owner must file a copy of the instrument in the county auditor's office and must submit the instrument vacating **all or part of** the plat for the approval of the plan commission that has jurisdiction over the platted area under IC 36-7-4 **or the plat committee acting on behalf of the plan commission**. If no plan commission has jurisdiction over the platted area under IC 36-7-4, the instrument must be submitted for the approval of:

- (1) the county executive, in the case of land located in an unincorporated area; or
- (2) the municipal works board, in the case of land located inside the corporate boundaries of a municipality.

The instrument may be approved under this section without notice or a hearing. The provisions of IC 4-21.5 concerning notice and hearing do not apply to the approval of an instrument under this section.

~~(c)~~ (d) The county recorder may record the instrument only if a certificate showing the approval of the vacation by the plan commission, **plat committee**, county executive, or municipal works board is attached to it. If the instrument is not executed and approved as required by this section, it is void.

~~(d)~~ (e) The owners of land in a plat that is located outside the corporate boundaries of any municipality may vacate all of the plat without the approval required by subsections ~~(b)~~ (c) and ~~(c)~~ (d) if no lots have been sold and no roads constructed in the plat, and all of the owners of land in the plat declare the plat to be vacated in a written instrument. The instrument must be executed, acknowledged, and recorded in the same manner as a deed to land.

~~(e)~~ (f) An instrument recorded under this section terminates the effect of the plat or part of the plat declared to be vacated, and it also terminates all public rights in the public ways and public places described in the plat or part of the plat. However, a public way that has been improved, or that is part of an improved plat, may be vacated only in accordance with section 12 of this chapter or with IC 36-7-4-712, whichever is applicable.

SECTION 19. IC 36-7-3-13 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 13. A remonstrance or objection permitted by section ~~11~~ or 12 of this chapter may be filed or raised by any person aggrieved by the proposed vacation, but only on one (1) or more of the following grounds:

(1) The vacation would hinder the growth or orderly development of the unit or neighborhood in which it is located or to which it is contiguous.

(2) The vacation would make access to the lands of the aggrieved person by means of public way difficult or inconvenient.

(3) The vacation would hinder the public's access to a church, school, or other public building or place.

(4) The vacation would hinder the use of a public way by the neighborhood in which it is located or to which it is contiguous.

SECTION 20. IC 36-7-4-208 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 208. (a) ADVISORY. The county plan commission consists of nine (9) members, as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county surveyor or the county surveyor's designee.

(4) The county agricultural extension educator. However, if the county does not have a county agricultural extension educator, the county extension board shall select a resident of the county who is a property owner with agricultural interest to serve on the commission under this subdivision for a period not to exceed one (1) year.

(5) Five (5) members appointed in accordance with one (1) of the following:

(A) Four (4) citizen members, of whom no more than two (2) may be of the same political party. Each of the four (4) members must be:

(i) a resident of an unincorporated area of the county; or

(ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least two (2) of the citizen members must be residents of the unincorporated area of the county. Also one (1) township trustee, who must be a resident of an unincorporated area of the county appointed by the county executive upon the recommendation of the

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township trustees whose townships are within the jurisdiction of the county plan commission.

(B) Five (5) citizen members, of whom not more than three (3) may be of the same political party. Each of the five (5) members must be:

- (i) a resident of an unincorporated area of the county; or
- (ii) a resident of the county who is also an owner of real property located in whole or in part in an unincorporated area of the county;

appointed by the county executive. However at least two (2) members must be residents of the unincorporated area of the county.

If a county executive changes the plan commission from having members described in clause (B) to having members described in clause (A), the county executive shall appoint a township trustee to replace the first citizen member whose term expires and who belongs to the same political party as the township trustee. Each member appointed to the commission is entitled to receive compensation for mileage at the same rate and the same compensation for services as a member of a county executive, a member of a county fiscal body, a county surveyor, or an appointee of a county surveyor receives for serving on the commission, as set forth in section 222.5 of this chapter.

(b) ADVISORY. The metropolitan plan commission consists of nine (9) members, as follows:

- (1) One (1) member appointed by the county legislative body from its membership.
- (2) One (1) member appointed by the second class city legislative body from its membership.
- (3) Three (3) citizen members who:
 - (A) reside in an unincorporated area of the county; or
 - (B) reside in the county and also own real property located in whole or in part in an unincorporated area of the county;
 of whom no more than two (2) may be of the same political party, appointed by the county legislative body. One (1) of these members must be actively engaged in farming.
- (4) Four (4) citizen members, of whom no more than two (2) may be of the same political party, appointed by the second class city executive. One (1) of these members must be from the metropolitan school authority or community school corporation and a resident of that school district, and the other three (3) members must be residents of the second class city.

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(c) AREA. When there are six (6) county representatives, they are as follows:

(1) One (1) member appointed by the county executive from its membership.

(2) One (1) member appointed by the county fiscal body from its membership.

(3) The county superintendent of schools, or if that office does not exist, a representative appointed by the school corporation superintendents within the jurisdiction of the area plan commission.

(4) One (1) of the following appointed by the county executive:

(A) The county agricultural extension educator.

(B) The county surveyor or the county surveyor's designee.

(5) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county executive.

(6) One (1) citizen member who is:

(A) a resident of the unincorporated area of the county; or

(B) a resident of the county who is also an owner of real property located in whole or in part in the unincorporated area of the county;

appointed by the county fiscal body.

(d) AREA. When there are five (5) county representatives, they are the representatives listed or appointed under subsection (c)(3), (c)(4), (c)(5), and (c)(6) and:

(1) the county surveyor or the county surveyor's designee if the county executive appoints the county agricultural extension educator under subsection (c)(4); or

(2) the county agricultural extension educator if the county executive appoints the county surveyor under subsection (c)(4).

~~(e) AREA. The appointing authority may appoint an alternate member to participate on a commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.~~

SECTION 21. IC 36-7-4-209 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 209. (a) AREA. When the number of representatives for a municipality is two (2), one

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(1) is a member of the municipal legislative body appointed by the legislative body and the other is a citizen member appointed by the municipal executive.

(b) AREA. When the number of representatives for a municipality is three (3), one (1) is a member of the legislative body appointed by the legislative body and two (2) are citizen members appointed by the executive.

(c) AREA. When the number of representatives for a municipality is four (4), one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and two (2) are citizen members appointed by the executive.

(d) AREA. When the number of representatives for a municipality is five (5) or more, one (1) is a member of the works board or the board of sanitary commissioners, appointed by the executive, one (1) is a member of the legislative body appointed by the legislative body, and the remainder are citizen members appointed by the executive.

~~(e) AREA. The appointing authority may appoint an alternate member to participate on the commission established under section 204 of this chapter in a hearing or decision if the regular member it has appointed is unavailable. An alternate member shall have all of the powers and duties of a regular member while participating on the commission.~~

SECTION 22. IC 36-7-4-220 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 220. (a) If a vacancy occurs among the plan commission members who are appointed, then the appointing authority shall appoint a member for the unexpired term of the vacating member. **The appointing authority may also appoint an alternate member to participate with the commission in a hearing or decision if a regular member the appointing authority has appointed:**

(1) has a disqualification under:

(A) IC 4-21.5-3; or

(B) section 223 of this chapter; or

(2) is otherwise unavailable to participate in the hearing or decision.

An alternate member has all the powers and duties of a regular member while participating in the hearing or decision.

(b) If a vacancy occurs in the office of the county surveyor **while the county surveyor is serving on the plan commission**, then the county engineer shall **be a member of participate with** the plan commission during the time the office of the county surveyor is vacant. **The county**

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1 **engineer has all the powers and duties of a regular member while**
 2 **participating under this subsection.**

3 (c) An appointed member who misses three (3) consecutive regular
 4 meetings of the ~~metropolitan development plan~~ commission shall be
 5 treated as if the member had resigned, unless the appointing authority
 6 reaffirms the member's appointment.

7 SECTION 23. IC 36-7-4-402 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 402. (a)
 9 ADVISORY. Each advisory plan commission shall prescribe the
 10 qualifications of, appoint, remove, and fix the compensation of the
 11 employees of the commission, which compensation must conform to
 12 salaries and compensations fixed before that time by the fiscal body of
 13 the county or municipality, as the case may be. The commission shall
 14 delegate authority to its employees to perform ministerial acts in all
 15 cases except where final action of the commission is necessary.

16 (b) AREA. Each area plan commission shall prescribe the
 17 qualifications of, and with the consent of the executive director, fix the
 18 compensation of the employees of the planning department, which
 19 compensation must conform to salaries and compensations fixed before
 20 that time by the county fiscal body. The commission shall delegate
 21 authority to its employees to perform ministerial acts in all cases except
 22 where final action of the commission or the board of zoning appeals is
 23 required by the area planning law.

24 (c) METRO. The metropolitan development commission shall
 25 delegate authority to employees of the department of metropolitan
 26 development to perform all ministerial acts in all cases except where
 27 final action of the commission or a board of zoning appeals is required
 28 by the metropolitan development law.

29 (d) **Subject to IC 4-21.5**, the plan commission may designate a
 30 hearing examiner or a committee of the commission to conduct any
 31 public hearing required to be held by the commission. Such a hearing
 32 must be held upon the same notice and under the same rules as a
 33 hearing before the entire commission, and the examiner or committee
 34 shall:

35 (1) report **proposed** findings of fact and recommendations for
 36 decision to the commission, **in a case in which the commission**
 37 **has the authority to grant or deny approval or otherwise**
 38 **make a decision; or**

39 (2) report a **proposed recommendation or no recommendation**
 40 **in a case in which a proposal is to be certified to a legislative**
 41 **body by the commission under section 605 of this chapter.**

42 The commission shall by rule provide reasonable opportunity for

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interested persons to file exceptions to the findings and recommendations; and if any exception is filed in accordance with those rules, the commission shall hold the prescribed hearing. If no exception is filed, the commission shall render its decision without further hearing.

(e) ~~METRO~~. The metropolitan development **Subject to IC 4-21.5, the plan** commission may designate a historic preservation commission created under **IC 36-7-11-4 or** IC 36-7-11.1-3 to conduct the public hearing required to be held by the ~~metropolitan development commission~~ **plan commission** under the 600 series of this chapter relative to the territory included in a historic area or historic zoning district created under **IC 36-7-11-7 or** IC 36-7-11.1-6. The hearing must be held upon the same notice and under the same rules as a hearing before the ~~metropolitan development~~ **plan** commission. The historic preservation commission shall report to the ~~metropolitan development plan~~ **plan** commission the historic preservation commission's findings of fact and recommendations for decision. The ~~metropolitan development commission~~ shall by rule provide reasonable opportunity for interested persons to file exceptions to the findings and recommendations. If an exception is filed in accordance with the rules, the ~~metropolitan development commission~~ shall hold the prescribed hearing. If an exception is not filed, the ~~metropolitan development commission~~ shall render a decision without further hearing. However, this subsection **proposed recommendation or no recommendation.**

(f) **METRO**. Subsection (e) does not eliminate the need for a historic preservation commission to issue a certificate of appropriateness under IC 36-7-11.1-8(e) before the approval of a rezoning by the metropolitan development commission.

SECTION 24. IC 36-7-4-403.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 403.5. (a) ~~METRO~~. If authorized by a zoning ordinance, the plan commission may designate a hearing examiner or committee of the commission to conduct a combined hearing procedure relative to developments that require more than one (1) hearing under this chapter. In conducting the combined hearing procedure under this section, the hearing examiner or committee of the commission may exercise the following:

- (1) Powers of the hearing examiner under section 402(d) **of this chapter** in relation to the 600 series of this chapter.
- (2) Powers of the plat committee under the 700 series of this chapter.
- (3) Powers of a board of zoning appeals under the 900 series of this chapter.

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(b) Decisions of the hearing examiner or committee of the plan commission under the combined hearing procedure ~~may be excepted to or appealed as follows:~~ **are subject to IC 4-21.5 and the following:**

(1) Decisions under the authority of section 402(d) **of this chapter** in relation to powers granted under the 600 series of this chapter shall be excepted to in the same manner as exceptions may be filed to decisions of the hearing examiner or committee under section 402(d).

(2) Decisions under the authority of the 700 series of this chapter shall be appealed to the plan commission in the same manner as decisions of the plat committee may be appealed.

(3) Decisions under the authority of the 900 series of this chapter shall be appealed to the plan commission within five (5) days after the decision is rendered and the plan commission shall consider the petition in the same manner as the petition would be considered by a board of zoning appeals.

(c) **Subject to IC 4-21.5**, the plan commission shall make rules governing the hearing of cases under the combined hearing procedure. The rules may not require a petitioner or an applicant to use the combined hearing procedure authorized under this section.

SECTION 25. IC 36-7-4-705 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 705. Upon receipt of an application for primary approval, the plan commission staff shall review the application for technical conformity with the standards fixed in the subdivision control ordinance. Within thirty (30) days after receipt, the staff shall announce the date for a hearing before the plan commission or plat committee and provide for notice in accordance with section 706 of this chapter. **Subject to IC 4-21.5**, the plan commission shall, by rule, prescribe procedures for setting hearing dates and for the conduct of hearings.

SECTION 26. IC 36-7-4-707 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 707. (a) If, after the hearing, the plan commission or plat committee determines that the application and plat comply with the standards in the subdivision control ordinance, it shall make written findings and a decision granting primary approval to the plat. ~~This decision must be signed by an official designated in the subdivision control ordinance.~~

(b) If, after the hearing, the plan commission or plat committee disapproves the plat, it shall make written findings that set forth its reasons and a decision denying primary approval. ~~and shall provide the applicant with a copy. This decision must be signed by the official designated in the subdivision control ordinance.~~

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(c) Primary approval or disapproval of a plat by the **plan commission or plat committee** may be appealed only under section 708 of this chapter. However, it may not be taken directly to court for review under section 1016 of this chapter until administrative remedies are exhausted: **must comply with IC 4-21.5-3.**

(d) This section applies to any subdivision of land, whether or not it is exempted from the notice and hearing requirements of this series under section 701(d) of this chapter.

SECTION 27. IC 36-7-4-708 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 708. (a) An applicant or other interested party may appeal to the plan commission the primary approval or disapproval of a plat, or the imposition of a condition on primary approval by the plat committee. A notice of appeal must be filed with the commission within ten (10) days after the action of the plat committee. However, if the plat committee grants primary approval for the subdivision of land without public notice and hearing under section 701(d) of this chapter, an interested party may appeal the approval to the plan commission by filing a notice of appeal with the plan commission not more than ten (10) days after a copy of the plat committee's action is mailed to the interested party. Notice shall be given and a hearing held by the commission in the same manner as in the case of the plat committee.

(b) The commission has the same power as the committee to approve, disapprove, or impose conditions on the approval of plats.

(c) The primary approval by the commission of a plat must be certified on behalf of the commission by an official designated in the subdivision control ordinance.

(d) **The Primary approval or disapproval of a plat by the plan commission or plat committee or the imposition of a condition on primary approval is a final decision of the plan commission that may be reviewed as provided by section 1016 of this chapter: subject to judicial review under IC 4-21.5-5.**

SECTION 28. IC 36-7-4-710 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 710. (a) The plan commission may grant secondary approval of a plat under this section or may delegate to the plat committee or staff the authority to grant such secondary approvals.

(b) Secondary approval may be granted, after expiration of the time provided under IC 4-21.5 for appeal under section 708 of this chapter: **of primary approval or imposition of a condition on primary approval.**

(c) No notice or hearing is required, and the provisions of this series

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1 **and IC 4-21.5** concerning notice and hearing do not apply to secondary
2 approvals.

3 (d) A plat of a subdivision may not be filed with the auditor, and the
4 recorder may not record it, unless it has been granted secondary
5 approval and signed and certified by the official designated in the
6 subdivision control ordinance governing the area. The filing and
7 recording of the plat is without legal effect unless approved by the
8 commission or committee.

9 SECTION 29. IC 36-7-4-711 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 711.
11 ~~ADVISORY AREA.~~ (a) The plan commission (or plat committee
12 acting on its behalf), proceeding in accordance with ~~IC 36-7-3,~~
13 **IC 36-7-3-10 or with this section**, has exclusive control over the
14 vacation of plats or parts of plats. **In a case not subject to**
15 **IC 36-7-3-10, this section provides an alternate procedure under**
16 **which an owner of land in a plat may file with the plan commission**
17 **a petition to vacate all or part of the plat pertaining only to the**
18 **land owned by the petitioner.**

19 (b) A petition under this section must:

- 20 (1) state the reasons for and the circumstances prompting the
- 21 request;
- 22 (2) specifically describe the property in the plat proposed to
- 23 be vacated; and
- 24 (3) give the name and address of every other owner of land in
- 25 the plat.

26 Subject to section 714(b) of this chapter, a petition under this
27 section may also include a request to vacate any recorded
28 covenants filed as a part of the plat.

29 (c) Not more than thirty (30) days after receipt of a petition
30 under this section, the plan commission staff shall announce the
31 date for the hearing before the plan commission. Subject to
32 IC 4-21.5-3, the plan commission shall adopt rules prescribing
33 procedures for setting hearing dates and for providing other notice
34 as may be required in accordance with this chapter or IC 4-21.5-3.
35 The petitioner shall pay all expenses of providing the notice
36 required by this subsection.

37 (d) Subject to IC 4-21.5, the plan commission shall adopt rules
38 prescribing procedures for the conduct of the hearing, which must
39 include a provision giving every other owner of land in the plat an
40 opportunity to comment on the petition.

41 (e) After hearing the petition, the plan commission shall approve
42 or disapprove the request. The plan commission shall approve the

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vacation of all or part of a plat only upon a determination that:

(1) conditions in the platted area have changed so as to defeat the original purpose of the plat;

(2) it is in the public interest to vacate all or part of the plat; and

(3) the value of that part of the land in the plat not owned by the petitioner will not be diminished by vacation.

(f) The plan commission may impose reasonable conditions as part of any approval. The plan commission shall furnish a copy of its decision to the county recorder for recording.

(g) A plan commission's approval or disapproval under this section must comply with IC 4-21.5-3.

SECTION 30. IC 36-7-4-712 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 712. ~~(a)~~ METRO. The plat committee has exclusive control over the vacation of:

(1) plats or parts of plats; and

(2) public ways, easements, or public places, or parts of any of them, whether or not they are included in an approved plat;

in the county. ~~The plat committee may adopt rules governing the procedure for these vacations.~~ The vacation of public ways, easements, or public places, or parts of any of them may be made only upon a finding by the plat committee that the vacation is in the public interest. The plat committee may accomplish the vacation of plats or parts of plats by proceeding in accordance with IC 36-7-3-10 or ~~IC 36-7-3-11~~. ~~Vacation or replatting may include the vacation or amendment of any recorded covenant running in favor of any governmental agency; or restriction; that was contained in the original plat.~~ **section 711 of this chapter.**

~~(b) METRO:~~ An applicant or other interested party may appeal the approval or disapproval of a vacation in the manner prescribed by ~~section 708 of this chapter.~~

SECTION 31. IC 36-7-4-714 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 714. (a) The following are subject to judicial review under IC 4-21.5-5:**

(1) Approval or disapproval of the vacation of all or part of a plat.

(2) Imposition of a condition on approval of the vacation of all or part of a plat.

(b) The vacation of all or part of a plat may include the vacation of any recorded covenants filed with the plat, but only upon a determination that:

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(1) the platted area is within a blighted area and the covenant vacation would promote a recovery of property values in the blighted area by allowing or encouraging normal development and occupancy of the platted area;

(2) the covenant vacation is needed to secure for the public adequate light, air, convenience of access, or safety from fire, flood, or other danger;

(3) the covenant vacation is needed to lessen or avoid congestion in the public ways; or

(4) the covenant vacation would otherwise promote the public health, safety, comfort, morals, convenience, and general welfare.

SECTION 32. IC 36-7-4-715 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 715. After the termination of a vacation proceeding under this chapter, a subsequent vacation proceeding affecting the same property and asking for the same relief may not be initiated for two (2) years.**

SECTION 33. IC 36-7-4-907 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 907. (a) If a vacancy occurs among the members of the board of zoning appeals, the appointing authority shall appoint a member for the unexpired term of the vacating member. In addition, the appointing authority may appoint an alternate member to participate with the board in any hearing or decision if the regular member it has appointed has a disqualification under ~~section 909 of this chapter~~ **IC 4-21.5-3** or is otherwise unavailable to participate in the hearing or decision. An alternate member shall have all of the powers and duties of a regular member while participating in the hearing or decision.

(b) ~~METRO~~. A member of the ~~metropolitan~~ board of zoning appeals who misses three (3) consecutive regular meetings of the board shall be treated as if ~~he the member~~ had resigned, **unless the appointing authority reaffirms the member's appointment.**

(c) ~~METRO~~. Members serving in any division of the ~~metropolitan~~ board of zoning appeals shall also serve as alternate members for the other divisions of the ~~metropolitan~~ board of zoning appeals. Whenever regular members serving in a particular division are unavailable, the chairman or vice chairman of the affected division may select members from other divisions in order to assemble up to five (5) members to participate in any hearing or decision.

SECTION 34. IC 36-7-4-916 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 916. (a) The

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board of zoning appeals shall adopt rules, which may not conflict with the zoning ordinance **or IC 4-21.5**, concerning:

- (1) the filing of appeals;
- (2) the application for variances, special exceptions, special uses, contingent uses, and conditional uses;
- (3) the giving of notice;
- (4) the conduct of hearings; and
- (5) the determination of whether a variance application is for a variance of use or for a variance from the development standards (such as height, bulk, or area).

(b) The board of zoning appeals may also adopt rules providing for:

- (1) the allocation of cases filed among the divisions of the board of zoning appeals; and
- (2) the fixing of dates for hearings by the divisions.

(c) Rules adopted by the board of zoning appeals shall be printed and be made available to all applicants and other interested persons.

SECTION 35. IC 36-7-4-919 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 919. ~~(a)~~ An appeal filed with the board of zoning appeals must specify the grounds of the appeal and must be filed within such time and in such form as may be prescribed by the board of zoning appeals by rule.

~~(b) The administrative official, hearing officer, administrative board, or other body from whom the appeal is taken shall, on the request of the board of zoning appeals, transmit to it all documents, plans, and papers constituting the record of the action from which an appeal was taken.~~

~~(c) Certified copies of the documents, plans, and papers constituting the record may be transmitted for purposes of subsection (b).~~

~~(d) Upon appeal, the board may reverse, affirm, or modify the order, requirement, decision, or determination appealed from. For this purpose, the board has all the powers of the official, officer, board, or body from which the appeal is taken.~~

~~(e) The board shall make a decision on any matter that it is required to hear under the 900 series either:~~

- ~~(1) at the meeting at which that matter is first presented; or~~
- ~~(2) at the conclusion of the hearing on that matter, if it is continued.~~

~~(f) Within five (5) days after making any decision under the 900 series, the board of zoning appeals shall file in the office of the board a copy of its decision.~~

SECTION 36. IC 36-7-4-920 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 920. (a) The board of zoning appeals shall fix a reasonable time for the hearing of

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administrative appeals, exceptions, uses, and variances.

(b) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given ~~at least ten (10) days before the date set for the hearing.~~ **in accordance with IC 4-21.5-3.**

(c) The party taking the appeal, or applying for the exception, use, or variance, may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.

(d) The board shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.

(e) The staff (as defined in the zoning ordinance), if any, may appear before the board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.

~~(f) Other persons may appear and present relevant evidence.~~

~~(g) A person may not communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board. Not less than five (5) days before the hearing, however, the staff (as defined in the zoning ordinance); if any, may file with the board a written statement setting forth any facts or opinions relating to the matter.~~

~~(h) The board may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address. If the written appearance is entered more than four (4) days before the hearing, the board may also require the petitioner to furnish each adverse party with a copy of the petition and a plot plan of the property involved.~~

SECTION 37. IC 36-7-4-923 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 923. ~~(a) This section IC 4-21.5-3-34 allows the establishment of an alternate procedure by the plan commission procedures under which there can be a more expedient disposition of certain matters. When authorized by the plan commission, a hearing officer has the power of a board of zoning appeals to approve or deny, through the alternate procedure allowed by this section:~~

(1) a variance from the development standards of the zoning ordinance in accordance with section 918.5 of this chapter; or

(2) a special exception; special use; contingent use; or conditional use from the terms of the zoning ordinance in accordance with section 918.2 of this chapter; or

(3) a variance of use from the terms of the zoning ordinance in

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accordance with section 918.4 of this chapter; however, the authority of a hearing officer under this subdivision may be exercised only if:

(A) the area planning law is not applicable; and

(B) the variance of use would allow all of the following:

(i) The expansion of a use currently existing on the tract;

(ii) A use that is consistent with the comprehensive plan;

(b) All requirements for variances, exceptions, and uses imposed by the 900 series apply to the alternate procedure, except to the extent that a provision of section 924 of this chapter imposes a different requirement:

(c) The alternate procedure does not apply in any excluded city as described in IC 36-3-1-7. Sections 919(f) and 922 of this chapter do not apply to the alternate procedure:

(d) The hearing officer (who may be a board member, a staff member, or any other person) shall be appointed by the plan commission. More than one (1) hearing officer may be appointed. A hearing officer may be removed from his responsibilities at any time by the plan commission:

(e) METRO: The plan commission may adopt other rules for the alternate procedure not inconsistent with the 900 series of the metropolitan development law. These rules may specify the period during which the staff may indicate whether the staff objects to the proposed variance, exception, or use. These rules may also provide for public notice and due notice to interested parties in accordance with section 920(b), 920(c), and 920(d) of this chapter, but the rules may, because of the nature of the petitions heard under the alternate procedure, provide for a less inclusive definition of "interested person" and provide for a quicker and less burdensome method of giving notice to interested persons than rules applicable to petitions not filed under the alternate procedure. For purposes of subsection (d), the director of the department of metropolitan development shall nominate, and the plan commission shall appoint, all hearing officers; such a hearing officer may be removed from his responsibilities at any time by either the director or the plan commission:

(f) METRO: The plan commission may, if requested by a historic preservation commission created under IC 36-7-11.1-3, appoint:

(1) a member of the historic preservation commission;

(2) a member of the historic preservation staff; or

(3) a person who is an employee of the department of metropolitan development;

as a hearing officer to act in a historic area or historic zoning district

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1 created under IC 36-7-11.1-6. The hearing officer may be removed
 2 from the hearing officer's responsibilities at any time by either the
 3 historic preservation commission or the plan commission.

4 SECTION 38. IC 36-7-4-1001 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1001. (a) When
 6 an appeal from the decision of an official or board has been filed with
 7 the board of zoning appeals, proceedings and work on the premises
 8 affected shall be stayed unless the official or board certifies to the
 9 board of zoning appeals that, by reason of the facts stated in the
 10 certificate, a stay would cause imminent peril to life or property. In that
 11 case, proceedings or work may not be stayed except by a restraining
 12 order except as provided in IC 4-21.5.

13 (b) After notice to the officer or board and to the owner of the
 14 premises affected and after due cause is shown, the circuit or superior
 15 court of the county in which the premises affected are located may
 16 grant the restraining order.

17 SECTION 39. IC 36-7-4-1010 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1010. (a) Costs
 19 may not be allowed against the a plan commission or board of zoning
 20 appeals under IC 4-21.5-5 unless it appears to the court that the
 21 commission or board acted with gross negligence or in bad faith in
 22 making the decision brought up for review.

23 (b) Issues in any proceeding under sections 1003 through 1009 of
 24 this chapter have preference over all other civil actions and
 25 proceedings.

26 SECTION 40. IC 36-7-4-1016 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1016. The
 28 following decisions of the plan commission may be reviewed by
 29 certiorari procedure in the same manner as that provided for the appeal
 30 of a are subject to judicial review under IC 4-21.5-5:

31 (1) A decision of the board of zoning appeals under the 900
 32 series of this chapter (administrative appeals, variances,
 33 special exceptions, special uses, contingent uses, and
 34 conditional uses), including a decision of the legislative body
 35 under section 918.6 of this chapter.

36 (1) (2) A final decision of the plan commission under the 700
 37 series of this chapter (subdivision control).

38 (2) A final decision under IC 36-7-3-11(h) (appeal of a vacation
 39 decision).

40 (3) A decision of the impact fee review board under the 1300
 41 series of this chapter (impact fees).

42 (3) (4) A final decision of the plan commission under the 1400

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series of this chapter (development plans).

~~(4)~~ (5) A ~~final~~ decision of the plan commission under the 1500 series of this chapter (planned unit development), when authority to make a ~~final~~ decision is delegated to the plan commission by the legislative body under section 1511 of this chapter.

SECTION 41. IC 36-7-4-1020 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1020. (a) All ordinances adopted under this chapter are presumed to have been validly adopted.

(b) A ~~court~~ plan commission or a board of zoning appeals shall take judicial official notice of all ordinances adopted under this chapter.

SECTION 42. IC 36-7-4-1332 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1332. (a) A fee payer is entitled to a refund of an impact fee if an infrastructure agency:

(1) has failed to complete a part of the infrastructure for which the impact fee was imposed not later than:

(A) twenty-four (24) months after the time described in section 1331 of this chapter; or

(B) a longer time as is reasonably necessary to complete the infrastructure if unforeseeable and extraordinary circumstances that are not in whole or in part caused by the unit have delayed the construction;

(2) has unreasonably denied the fee payer the use and benefit of the infrastructure during the useful life of the infrastructure; or

(3) has failed within the earlier of:

(A) six (6) years after issuance of the structural building permit; or

(B) the anticipated infrastructure completion date as specified in the zone improvement plan existing on the date the impact fee was collected;

to make reasonable progress toward completion of the specific infrastructure for which the impact fee was imposed or thereafter fails to make reasonable progress toward completion.

(b) An application for a refund under subsection (a) must be filed with the unit that imposed the impact fee not later than two (2) years after the right to a refund accrues. A unit shall issue a refund in part or in full or shall reject the application for refund not later than thirty (30) days after receiving an application for a refund.

(c) If a unit approves a refund in whole or in part, the unit shall pay the amount approved, plus interest from the date on which the impact fee was paid to the date the refund is issued. The interest rate shall be the same rate as the rate that the unit's impact fee ordinance provides

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for impact fee payments paid in installments.

(d) If a unit rejects an application for refund or approves only a partial refund, the fee payer may appeal not later than sixty (60) days after the rejection or partial approval to the unit's impact fee review board established under section 1338 of this chapter by filing with the board an appeal on a form prescribed by the board. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(e) An impact fee ordinance shall designate the employee or official of the unit who is responsible for accepting, rejecting, and paying a refund and interest.

(f) A unit's impact fee review board shall hold a hearing **under IC 4-21.5-3** on all appeals for a refund under this section. The hearing shall be held not later than forty-five (45) days after the application for appeal is filed with the board. A unit's impact fee review board shall provide notice of the application for refund to the infrastructure agency responsible for the infrastructure for which the impact fee was imposed.

(g) An impact fee review board holding a hearing under subsection (f) shall determine the amount of a refund that shall be made to the fee payer from the account established for the infrastructure for which the fee was imposed. A refund ordered by the board must include interest from the date the impact fee was paid to the date the refund is issued at the same rate the ordinance provides for impact fee payments paid in installments.

(h) ~~A party aggrieved by a final decision~~ **A decision** of an impact fee review board in a hearing under subsection (f) ~~may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo.~~ **subject to judicial review under IC 4-21.5-5.**

SECTION 43. IC 36-7-4-1333 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1333. (a) A person against whom an impact fee has been assessed may appeal the amount of the impact fee. A unit may not deny issuance of a structural building permit on the basis that an impact fee has not been paid or condition issuance of the permit on the payment of an impact fee. However, in the case of an impact fee of one thousand dollars (\$1,000) or less a unit may require a fee payer to:

- (1) pay the impact fee; or
- (2) bring an appeal under this section;

before the unit issues a structural building permit for the development for which the impact fee was assessed.

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(b) A person must file a petition for a review of the amount of an impact fee with the unit's impact fee review board not later than thirty (30) days after issuance of the structural building permit for the development for which the impact fee was assessed. An impact fee ordinance may require a petition to be accompanied by payment of a reasonable fee not to exceed one hundred dollars (\$100). A fee payer shall receive a full refund of the filing fee if:

- (1) the fee payer prevails;
- (2) the amount of the impact fee or the reductions or credits against the fee is adjusted by the unit, the board, or a court; and
- (3) the body ordering the adjustment finds that the amount of the fee, reductions, or credits were arbitrary or capricious.

(c) A unit's impact fee review board shall prescribe the form of the petition for review of an impact fee under subsection (b). The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person. The form must require the petitioner to specify:

- (1) a description of the new development on which the impact fee has been assessed;
- (2) all facts related to the assessment of the impact fee; and
- (3) the reasons the petitioner believes that the amount of the impact fee assessed is erroneous or is greater than the amount allowed by the fee limitations set forth in this series.

(d) A unit's impact fee review board shall prescribe a form for a response by a unit to a petition for review under this section. The board shall issue instructions for completion of the form. The form must require the unit to indicate:

- (1) agreement or disagreement with each item indicated on the petition for review under subsection (c); and
- (2) the reasons the unit believes that the amount of the fee assessed is correct.

(e) Immediately upon the receipt of a timely filed petition on the form prescribed under subsection (c), a unit's impact fee review board shall provide a copy of the petition to the unit assessing the impact fee. The unit shall not later than thirty (30) days after the receipt of the petition provide to the board a completed response to the petition on the form prescribed under subsection (d). The board shall immediately forward a copy of the response form to the petitioner.

(f) An impact fee review board shall, **under IC 4-21.5-3:**

- (1) review the petition and the response submitted under this section; and
- (2) determine the appropriate amount of the impact fee not later

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than thirty (30) days after submission of both petitions.

(g) A fee payer aggrieved by a final determination decision of an impact fee review board may appeal to the circuit or superior court of the county in which the unit is located and is entitled to a trial de novo. If the assessment of a fee is vacated by judgment of the court, the assessment of the impact fee shall be remanded to the board for correction of the impact fee assessment and further proceedings in accordance with law. **under subsection (f) is subject to judicial review under IC 4-21.5-5.**

(h) If a petition for a review or an appeal of an impact fee assessment is pending, the impact fee is not due and payable until after the petition or appeal is finally adjudicated and the amount of the fee is determined.

SECTION 44. IC 36-7-4-1336 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1336. (a) If the parties cannot agree on the cost or fair market value under section 1335(d) of this chapter, the fee payer or the person constructing or providing the infrastructure or improvement may file a petition for determination of the amount of the credit with the unit's impact fee review board not later than thirty (30) days after the structural building permit is issued for the development on which the impact fee is imposed. A petition under this subsection may be made as part of an appeal proceeding under section 1334 of this chapter or may be made under this section.

(b) An impact fee review board shall prescribe the form of the petition for determination of the amount of a credit under this section. The board shall issue instructions for completion of the form. The form and the instructions must be clear, simple, and understandable to a lay person.

(c) An impact fee review board shall prescribe a form for a response by the applicable infrastructure agency to a petition under this section for determination of a credit amount. The board shall issue instructions for completion of the form.

(d) Immediately after receiving a timely filed petition under this section for determination of a credit amount, an impact fee review board shall provide a copy of the petition to the applicable infrastructure agency. Not later than thirty (30) days after receiving a copy of the petition, the infrastructure agency shall provide to the board a response on the form prescribed under subsection (c). The board shall immediately provide the petitioner with a copy of the infrastructure agency's response.

(e) The impact fee review board shall, **under IC 4-21.5-3:**

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- (1) review a petition and response filed under this section; and
- (2) determine the amount of the credit not later than thirty (30) days after the response is filed.

(f) A fee payer aggrieved by a final determination decision of an impact fee review board under this section

~~(1) may appeal to the circuit or superior court of the county in which the unit is located; and~~

~~(2) is entitled to a trial de novo.~~ **subject to judicial review under IC 4-21.5-5.**

SECTION 45. IC 36-7-4-1401.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1401.5. (a) A legislative body may, in a zoning ordinance, designate zoning districts in which a development plan is required. If a zoning district is designated under this section, the plan commission must approve or disapprove a development plan under this series for real property within the zoning district.

(b) The plan commission has exclusive authority to approve or disapprove a development plan for real property located within the plan commission's jurisdiction.

(c) Designation by the legislative body of a zoning district where a development plan is required is a legislative act, and is not subject to **judicial review by certiorari under section 10-16 of this chapter.** **under IC 4-21.5-5.**

SECTION 46. IC 36-7-4-1404 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1404. (a) If a zoning ordinance designates a zoning district under section 1401.5(a) of this chapter and authority is delegated under section 1402(c) of this chapter, the zoning ordinance must describe the following:

- (1) The duties of the plan commission staff, hearing examiner, or committee in reviewing a development plan.
- (2) The procedures for review of a development plan by the plan commission staff, hearing examiner, or committee.
- (3) The procedures for an appeal to the plan commission of a decision made by the plan commission staff, hearing examiner, or committee.

(b) A plan commission staff, hearing examiner, or committee to which authority has been delegated under section 1402(c) of this chapter may make a decision concerning a development plan without a public hearing if the zoning ordinance provides for an appeal of the decision directly to the plan commission.

(c) The zoning ordinance may provide for a hearing procedure for review of a development plan that is similar to the hearing procedure

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for review of subdivision plats under **IC 4-21.5-3** and the 700 series of this chapter. If such a procedure is adopted, the zoning ordinance may provide that public notice and hearing are not required for secondary review of a development plan. If notice and hearing are not required for secondary review of a development plan, the primary approval or disapproval of a development plan is ~~a final decision of the plan commission that may be reviewed only as provided in section 1016 of this chapter.~~ **subject to judicial review under IC 4-21.5-5.**

SECTION 47. IC 36-7-4-1406 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1406. (a) A plan commission shall **in accordance with IC 4-21.5-3** make written findings concerning each decision to approve or disapprove a development plan. ~~The zoning ordinance must designate an official who is responsible for signing written findings of the plan commission.~~

(b) Except as provided in section 1404(c) of this chapter, a decision of the plan commission approving or disapproving a development plan or a decision made under section 1405(b) of this chapter is ~~a final decision of the plan commission that may be reviewed only as provided in section 1016 of this chapter.~~ **subject to judicial review under IC 4-21.5-5.**

SECTION 48. IC 36-7-4-1511 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1511. (a) The legislative body may, in the zoning ordinance, delegate authority to conduct secondary review of a PUD district ordinance under section 1509(c) of this chapter.

(b) The legislative body may, in the zoning ordinance, delegate authority to modify permitted uses or development requirements that are specified in a PUD district ordinance.

(c) The legislative body may, in the zoning ordinance, delegate the authority to conduct secondary reviews and grant approvals under subsection (a) and to make modifications under subsections (b) and (i) to any of the following:

(1) The plan commission.

(2) A hearing examiner or committee designated by the plan commission under section 402(d) of this chapter.

(3) At least one (1) employee designated by the plan commission.

(d) If authority is delegated under subsection (c)(1), the zoning ordinance may provide for an appeal to the legislative body of the decision of the plan commission.

(e) If authority is delegated under subsection (c)(2) or (c)(3), the zoning ordinance must provide for an appeal to the legislative body or the plan commission of the decision of the hearing examiner,

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committee, employee, or group of employees.

(f) If the zoning ordinance provides for an appeal under subsection (d) or (e), the zoning ordinance must specify the appeal procedure.

(g) If authority to conduct secondary reviews is delegated under subsection (a), the legislative body must establish the following in the zoning ordinance:

(1) The nature of the proceedings required for conducting secondary review.

(2) The type of notice, if any, that must be given.

(h) Except as provided in subsection (i), if authority to make modifications in permitted uses or development requirements is delegated under subsection (b), a public hearing must be held before a modification is made. A hearing under this subsection must be conducted in the manner established by the legislative body in the zoning ordinance. Notice of the hearing must be given in the same manner as notice is given under section 604(b) and 604(c) of this chapter.

(i) The legislative body may define in the zoning ordinance minor modifications that may be made without a public hearing under subsection (h). The legislative body must establish in the zoning ordinance the nature of the proceedings and any notice required for the making of a minor modification under this subsection.

(j) The legislative body may, in the zoning ordinance, delegate authority to the plan commission to establish rules governing the nature of the proceedings and any notice required to conduct secondary review, grant an approval, or make a modification under this section.

(k) A decision of the plan commission to grant or deny an approval or a modification under this section, whether made after an original hearing or the hearing of an appeal, is ~~a final decision that may be reviewed under section 10-16 of this chapter.~~ **subject to judicial review under IC 4-21.5-5.**

SECTION 49. IC 36-7-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4. (a) A unit may establish, by ordinance, a historic preservation commission with an official name designated in the ordinance. The commission must have not less than three (3) nor more than nine (9) voting members, as designated by the ordinance. The voting members shall be appointed by the executive of the unit, subject to the approval of the legislative body. Voting members shall each serve for a term of three (3) years. However, the terms of the original voting members may be for one (1) year, two (2) years, or three (3) years in order for the terms to be staggered, as provided by the ordinance. A vacancy shall be filled for

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the duration of the term. In the case of a commission with jurisdiction in a city having a population of more than one hundred five thousand (105,000) but less than one hundred twenty thousand (120,000), the commission must ~~after June 30, 2001~~, include as a voting member the superintendent of the largest school corporation in the city.

(b) The ordinance may provide qualifications for members of the commission, but members must be residents of the unit who are interested in the preservation and development of historic areas. The members of the commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. The ordinance may also provide for the appointment of advisory members that the legislative body considers appropriate.

(c) The ordinance may:

(1) designate an officer or employee of the unit to act as administrator;

(2) permit the commission to appoint an administrator who shall serve without compensation except reasonable expenses incurred in the performance of the administrator's duties; or

(3) provide that the commission act without the services of an administrator.

(d) Members of the commission shall serve without compensation except for reasonable expenses incurred in the performance of their duties.

(e) The commission shall elect from its membership a chairman and vice chairman, who shall serve for one (1) year and may be reelected.

(f) The commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings. All meetings of the commission must be open to the public, and a public record of the commission's resolutions, proceedings, and actions must be kept. If the commission has an administrator, the administrator shall act as the commission's secretary, otherwise, the commission shall elect a secretary from its membership.

(g) The commission shall hold regular meetings, at least monthly, except when it has no business pending.

(h) A decision of the commission is subject to judicial review under IC 4-21.5-5. ~~as if it was a decision of a state agency.~~

SECTION 50. IC 36-7-11-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 12. (a) The commission may advise and make recommendations to the applicant

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before acting on an application for a certificate of appropriateness.

(b) If an application for a certificate of appropriateness:

(1) is approved by the commission; or

(2) is not acted on by the commission;

within thirty (30) days after it is filed, a certificate of appropriateness shall be issued. If the certificate is issued, the application shall be processed in the same manner as applications for building or demolition permits required by the unit, if any, are processed. If no building or demolition permits are required by the unit, the applicant may proceed with the work authorized by the certificate.

(c) If the commission denies an application for a certificate of appropriateness within thirty (30) days after it is filed, the certificate may not be issued. The commission must state its reasons for the denial in writing, and must advise the applicant. **accordance with IC 4-21.5-3.** An application that has been denied may not be processed as an application for a building or demolition permit and does not authorize any work by the applicant.

(d) The commission may grant an extension of the thirty (30) day limit prescribed by subsections (b) and (c) if the applicant agrees to it.

SECTION 51. IC 36-7-11.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 9. (a) A person may not construct any exterior architectural structure or feature in any historic area, or reconstruct, alter, or demolish any such exterior or designated interior structure or feature in the area, until the person has filed with the secretary of the commission an application for a certificate of appropriateness in such form and with such plans, specifications, and other material as the commission may from time to time prescribe and a certificate of appropriateness has been issued as provided in this section. However, this chapter does not:

(1) prevent the ordinary maintenance or repair of any such exterior or designated interior architectural structure or feature that does not involve a change in design, color or outward appearance of it;

(2) prevent any structural change certified by the department of metropolitan development as immediately required for the public safety because of a hazardous condition; or

(3) require a certificate of appropriateness for work that is exempted by a historic preservation plan under section 7 of this chapter.

(b) The commission shall hold a public hearing on any application for certificate of appropriateness. At least ten (10) days before the date set for the hearing, notice shall be published in accordance with

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IC 5-3-1, and notice shall be given additionally to the affected parties in accordance with the commission's rules of procedure.

(c) Upon hearing the application for a certificate of appropriateness, the commission shall determine whether the proposal will be appropriate to the preservation of the area and to the furtherance and development of historic preservation.

(d) In determining appropriateness of any proposed construction, reconstruction, or alteration, the commission shall consider, in addition to any other pertinent factors, the visual compatibility, general design, arrangement, color, texture, and materials in relation to the architectural or other design standards prescribed by the plan or any applicable zoning regulation, the design and character of the historic area, and the architectural factors of other structures in it. In determining appropriateness of any proposed demolition, the commission shall consider, in addition to any other pertinent factors, the character and significance of the subject structure in relation to the historic area and any other structures or sites in it, including its relative contribution to the historic and architectural values and significance of the area.

(e) However, if the commission finds under subsection (d) any application to be inappropriate, but that its denial would result in substantial hardship or deprive the owner of all reasonable use and benefit of the subject property, or that its effect upon the historic area would be insubstantial, the commission shall issue a certificate of authorization, which constitutes a certificate of appropriateness for purposes of this chapter.

(f) Issuance of a certificate of appropriateness is subject to review by the metropolitan development commission as to its appropriateness in relation to the comprehensive plan. This review must be in accordance with the same procedures and limitations applicable to appeals of decisions of boards of zoning appeals, as provided in ~~IC 36-7-4~~, **IC 4-21.5**, and must be initiated only upon notice of appeal by the division of planning and zoning certifying that this determination interferes with the comprehensive plan. **Notwithstanding IC 4-21.5**, all proceedings and work on the subject premises under the certificate of appropriateness are automatically stayed upon notice of the appeal.

SECTION 52. IC 36-7-11.1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 10. (a) If the commission determines that the proposed construction, reconstruction, alteration, or demolition will be appropriate, the secretary of the commission shall forthwith issue to the applicant a certificate of

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appropriateness.

(b) The commission may impose any reasonable conditions, consistent with the historic preservation plan, upon the issuance of a certificate of appropriateness, including the requirement of executing and recording covenants or filing a maintenance or performance bond. If the commission determines that a certificate of appropriateness should not be issued, the commission shall forthwith place upon its records the reasons for the determination and may include recommendations respecting the proposed construction, reconstruction, alteration, or demolition. The secretary of the commission shall forthwith notify the applicant of the determination transmitting to him an attested copy of the reasons and recommendations, if any, of the commission.

(c) Every determination of the commission upon an application for certificate of appropriateness is subject to **judicial** review ~~by certiorari upon petition to the circuit or superior court of the county by any aggrieved person; in the same manner and subject to the same limitations as a decision of a board of zoning appeals under IC 36-7-4. However, under IC 4-21.5-5. Notwithstanding IC 4-21.5,~~ upon notice of the filing of the petition ~~for writ of certiorari; for judicial review,~~ all proceedings and work on the subject premises are automatically stayed.

(d) ~~An appeal may be taken to the court of appeals of Indiana from the final judgment of the court reversing, affirming, or modifying the determination of the commission in the same manner and upon the same terms, conditions, and limitations as appeals in other civil actions.~~

SECTION 53. IC 36-7-11.1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 11. ~~(a)~~ **Subject to IC 4-21.5,** a hearing officer designated by the commission may conduct the public hearing provided for in this chapter on applications for a certificate of appropriateness. The commission may limit by rule or resolution the applications that a hearing officer may hear and determine.

~~(b) The hearing officer shall hold a public hearing under the same notice and procedural requirements as are applicable to a hearing before the commission. After the hearing on an application for a certificate of appropriateness, the hearing officer shall make a determination.~~

~~(c) The hearing officer may not issue a certificate of authorization.~~

~~(d) The hearing officer shall set forth the reasons for the determination and may impose conditions in accordance with section 10 of this chapter.~~

(e) The commission shall provide reasonable opportunity by rules

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for the applicant, any commission member, the administrator, or any interested person to file exceptions to the determination of the hearing officer. If an exception is properly filed, the commission shall hold a de novo hearing and make a determination. If such an exception is not filed, the determination of the hearing officer constitutes the final decision of the commission.

SECTION 54. IC 36-7-11.2-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 38. (a) Not later than thirty (30) days after a vote by the commission finally determining a matter, the commission shall enter a written final order stating the following:

- (1) The names of the members present and voting;
- (2) Whether the vote cast by each member was negative or affirmative;
- (3) The basic facts found by the members whose vote for or against the petitioner determined the matter.

in accordance with IC 4-21.5-3.

(b) If a tie vote occurs, the petition is considered to be determined adversely to the petitioner, with the members casting a vote adverse to the petitioner considered to be the majority.

SECTION 55. IC 36-7-11.2-58 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 58. (a) A person who has filed a petition under section 56 or 57 of this chapter shall, not later than ten (10) days after the filing, serve notice upon all interested parties **in accordance with IC 4-21.5-3**. The notice must state the following:

- (1) The full name and address of the following:
 - (A) The petitioner.
 - (B) Each attorney acting for and on behalf of the petitioner.
- (2) The street address of the Meridian Street and bordering property for which the petition was filed.
- (3) The name of the owner of the property.
- (4) The full name and address of, and the type of business, if any, conducted by:
 - (A) each person who at the time of the filing is a party to; and
 - (B) each person who is a disclosed or an undisclosed principal for whom the party was acting as agent in entering into; a contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement of any kind or nature concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property.

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(5) A description of the contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement sufficient to disclose the full nature of the interest of the party or of the party's principal in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.

(6) A description of the proposed use for which the rezoning or zoning variance is sought, sufficiently detailed to appraise the notice recipient of the true character, nature, extent, and physical properties of the proposed use.

(7) The date of the filing of the petition.

(8) The date, time, and place of the next regular meeting of the commission if a petition is for approval of a zoning variance. If a petition is filed with the development commission, the notice does not have to specify the date of a hearing before the commission or the development commission. However, the person filing the petition shall give ten (10) days notice of the date, time, and place of a hearing before the commission on the petition after the referral of the petition to the commission by the development commission.

(b) For purposes of giving notice to the interested parties who are owners, the records in the bound volumes of the recent real estate tax assessment records as the records appear in the offices of the township assessors as of the date of filing are considered determinative of the persons who are owners.

SECTION 56. IC 36-7-11.2-64 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 64. (a) A final determination by the commission is subject to judicial review. An interested party aggrieved by a determination may file with the circuit or superior court of Marion County a verified petition for writ of certiorari stating that the determination is illegal in whole or part. The petition must be filed not later than sixty (60) days after the date of the final determination. A change of venue is not permitted in a cause of action arising under this section: under IC 4-21.5-5.

(b) Upon the filing of a petition for writ of certiorari the petitioner shall have a copy of the petition served upon each interested party in the manner provided in this chapter for service of notice. Upon adequate showing by the petitioner that a copy of the petition has been served, the circuit or superior court shall enter an order directing the commission to show cause not later than thirty (30) days from the entry of the order why a writ of certiorari should not issue. If the commission or an interested party appearing in support of the commission's

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determination fails to show to the satisfaction of the court that a writ should not issue; the court may allow a writ directed to the commission. The writ must prescribe the time in which a return shall be made to the court. The time:

(1) may not be less than twenty (20) days from the date of the issuance of the writ; and

(2) may be extended by the court on application and on notice to all parties.

(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed.

(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:

(1) reverse;

(2) affirm, wholly or in part; or

(3) modify;

the determination of the commission brought up for review. Costs may not be allowed against the commission.

(e) **(b) Notwithstanding IC 4-21.5**, upon the filing of a petition under this section, for judicial review, the final determination of the commission with respect to which the petition is filed is considered without force and effect pending a final judgment by the court. **Notwithstanding IC 4-21.5**, if the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.

SECTION 57. IC 36-7-11.3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 32. (a) Not later

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than thirty (30) days after a vote by the commission ~~finally~~ determining a matter, the commission shall enter a written final order ~~stating the following:~~

(1) ~~The names of the members present and voting.~~

(2) ~~Whether the vote cast by each member was negative or affirmative.~~

(3) ~~The basic facts found by the members whose vote for or against the petitioner determined the matter.~~

in accordance with IC 4-21.5-3.

(b) If a tie vote occurs, the petition is considered to be determined adversely to the petitioner, with the members casting a vote adversely to the petitioner considered to be the majority.

SECTION 58. IC 36-7-11.3-52 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 52. (a) A person who has filed a petition under section 50 or 51 of this chapter shall, not later than ten (10) days after the filing, serve notice upon all interested parties **in accordance with IC 4-21.5-3**. The notice must state the following:

(1) The full name and address of the following:

(A) The petitioner.

(B) Each attorney acting for and on behalf of the petitioner.

(2) The street address of the primary and secondary property for which the petition was filed.

(3) The name of the owner of the property.

(4) The full name and address of and the type of business, if any, conducted by:

(A) each person who at the time of the filing is a party to; and

(B) each person who is a disclosed or an undisclosed principal for whom the party was acting as agent in entering into;

a contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement of any kind or nature concerning the subject property or the present or future ownership, use, occupancy, possession, or development of the subject property.

(5) A description of the contract of sale, lease, option to purchase or lease, agreement to build or develop, or other written agreement sufficient to disclose the full nature of the interest of the party or of the party's principal in the subject property or in the present or future ownership, use, occupancy, possession, or development of the subject property.

(6) A description of the proposed use for which the rezoning or zoning variance is sought, sufficiently detailed to appraise the

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notice recipient of the true character, nature, extent, and physical properties of the proposed use.

(7) The date of the filing of the petition.

(8) The date, time, and place of the next regular meeting of the commission if a petition is for approval of a zoning variance. If a petition is filed with the development commission, the notice does not have to specify the date of a hearing before the commission or the development commission. However, the person filing the petition shall give ten (10) days notice of the date, time, and place of a hearing before the commission on the petition after the referral of the petition to the commission by the development commission.

(b) For purposes of giving notice to the interested parties who are owners, the records in the bound volumes of the recent real estate tax assessment records as the records appear in the offices of the township assessors as of the date of filing are considered determinative of the persons who are owners.

SECTION 59. IC 36-7-11.3-59 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 59. (a) A final determination by the commission is subject to judicial review. An interested party aggrieved by a determination may file with the circuit or superior court of the county a verified petition for writ of certiorari stating that the determination is illegal in whole or part. The petition must be filed not later than sixty (60) days after the date of the final determination. A change of venue is not permitted in a cause of action arising under this section.

(b) Upon the filing of a petition for writ of certiorari the petitioner shall have a copy of the petition served upon each interested party in the manner provided in this chapter for service of notice. Upon adequate showing by the petitioner that a copy of the petition has been served, the circuit or superior court shall enter an order directing the commission to show cause not later than thirty (30) days from the entry of the order why a writ of certiorari should not issue. If the commission or an interested party appearing in support of the commission's determination fails to show to the satisfaction of the court that a writ should not issue, the court may allow a writ directed to the commission. The writ must prescribe the time in which a return shall be made to the court. The time:

(1) may not be less than twenty (20) days from the date of the issuance of the writ; and

(2) may be extended by the court on application and on notice to all parties.

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(c) The return to the writ of certiorari by the commission must contain copies of all filings, exhibits, and other matters presented to or considered by the commission in connection with the matter and the determination from which the appeal is taken, including a verbatim transcript of the proceedings at each public hearing that was held. The commission shall prepare the return at the expense of the party that filed the petition for certiorari. The return to the writ of certiorari must also show the grounds of the decision that was appealed: **under IC 4-21.5-5.**

(d) The court may decide and determine the sufficiency of the statements of illegality contained in the petition without further pleadings and may make a determination and enter judgment with reference to the legality of the decision of the commission on the facts set out in the return to the writ of certiorari. If the court determines that testimony is necessary for the proper disposition of the matter, the court may take evidence to supplement the evidence and facts disclosed by the return to the writ of certiorari. However, a review may not be by a trial de novo, and the court may not consider evidence that should properly or could have been presented to the commission. In passing on the legality of the determination by the commission, the court may:

- (1) reverse;
- (2) affirm, wholly or in part; or
- (3) modify;

the determination of the commission brought up for review. Costs may not be allowed against the commission.

(e) **(b) Notwithstanding IC 4-21.5-5-9**, upon the filing of a petition under this section, **for judicial review**, the final determination of the commission with respect to which petition is filed is considered without force and effect pending a final judgment by the court. **Notwithstanding IC 4-21.5-5-9**, if the final determination was made with respect to a petition for approval of a proposed rezoning or zoning variance, the approval by the commission is considered nonexistent pending final judgment.

SECTION 60. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 2006]: IC 36-7-3-11; IC 36-7-4-909; IC 36-7-4-915; IC 36-7-4-924; IC 36-7-4-1002; IC 36-7-4-1003; IC 36-7-4-1005; IC 36-7-4-1006; IC 36-7-4-1007; IC 36-7-4-1008; IC 36-7-4-1009; IC 36-7-4-1011; IC 36-7-11.2-65; IC 36-7-11.3-60.

SECTION 61. [EFFECTIVE JANUARY 1, 2006] **(a) IC 4-21.5 and IC 36-7, both as amended by this act, do not apply to a proceeding in which a decision of a board of zoning appeals has been entered before January 1, 2006.**

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(b) After December 31, 2005, a proceeding described in subsection (a) is subject to:

(1) IC 4-21.5 and IC 36-7, before those statutes were amended by this act; and

(2) IC 36-7-3-11, IC 36-7-4-909, IC 36-7-4-915, IC 36-7-4-924, IC 36-7-4-1002, IC 36-7-4-1003, IC 36-7-4-1005, IC 36-7-4-1006, IC 36-7-4-1007, IC 36-7-4-1008, IC 36-7-4-1009, IC 36-7-4-1011, IC 36-7-11.2-65, and IC 36-7-11.3-60, before those statutes were repealed by this act.

SECTION 62. [EFFECTIVE UPON PASSAGE] (a) A plan commission may adopt rules establishing informal procedures in accordance with IC 4-21.5-3-34, as amended by this act. If a plan commission adopts rules under this subsection, the rules must be effective after December 31, 2005, and must expire upon adoption of the ordinance described in subsection (b).

(b) The appropriate county or municipal legislative body shall adopt an ordinance establishing informal procedures in accordance with IC 4-21.5-3-34, as amended by this act, not later than January 1, 2007.

(c) The rules adopted by a plan commission under subsection (a) and the ordinance adopted by a legislative body under subsection (b) do not apply to a proceeding in which a decision of a board of zoning appeals has been entered before January 1, 2006.

(d) This SECTION expires January 1, 2008.

SECTION 63. An emergency is declared for this act.

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